

FORREST G. NICCUM, ET AL

IBLA 84-256 Decided June 6, 1985

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, declaring mining claims NM MC 092181 through NM MC 092187 abandoned and void for failure to timely file notices of location.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to timely file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), and 43 CFR Subpart 3833, in the proper Bureau of Land Management office conclusively constitutes abandonment of the mining claim by the owner. This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences.

APPEARANCES: John M. Reynolds, Esq., Silver City, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Forest G. Niccum, George B. Humphreys, A. W. Jones, and Chester F. Smith appeal from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated December 9, 1983, declaring mining claims NM MC 092181 through NM MC 092187 abandoned and void for failure to timely file notices of location.

The subject claims, located prior to October 22, 1976, are situated in secs. 19 and 30, T. 11 S., R. 8 W., New Mexico Principal Meridian. On October 1, 1979, appellant Jones filed with BLM proof of labor affidavits, a map, and a handwritten statement. On March 13, 1980, notices of location for the subject claims were filed with BLM.

In its decision, BLM found that:

43 U.S.C. Sec. 1744 (1976) and the regulations in 43 CFR 3833 require the owner of an unpatented mining claim located on or before October 21, 1976, to file a copy of the official record

of the notice or certificate of location of the claim with the proper BLM office on or before October 22, 1979, or the claim will be deemed conclusively to be abandoned and void.

Because the notices of location were not timely filed, the seven claims identified on Enclosure 1 are deemed abandoned and declared void. George L. Harrison, 49 IBLA 157 (1980).

A timely appeal was filed with the Board. 1/

On appeal appellants set forth the background relating to the claims. They state none of them is knowledgeable of the mining law and that they had employed an agent to "do the necessary work on the claims and keep them in force and effect." Appellants do not deny, however, that recordation of their claims was untimely. Rather, appellants argue it is not the intent of 43 U.S.C. § 1744 (1982) and 43 CFR Subpart 3833 to deprive them of "valuable mineral properties because of a technicality" (Statement of Reasons at 4).

[1] The Board has consistently held that under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and 43 CFR 3833.1-2, the owner of a mining claim located on or before October 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper BLM office on or before October 22, 1979. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Daryl E. Bartholomew, 63 IBLA 198 (1982); see Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Don G. Gilbertson, 59 IBLA 143 (1981); Donald L. Hoffman, 58 IBLA 327, 328 (1981). In United States v. Locke, 105 S. Ct. 1785 (1985), the Supreme Court considered the constitutionality of section 314(c) of FLPMA. The Court held section 314 constitutional and noted "we find that Congress intended in § 314(c) to extinguish those claims for which timely filings were not made. Specific evidence of intent to abandon is simply made irrelevant by § 314(c); the failure to file on time, in and of itself, causes a claim to be lost." 105 S. Ct. at 1795-96. Therefore, BLM properly declared appellants' mining claims abandoned and void for failure to timely file notices of location.

1/ On Oct. 21, 1983, the United States District Court for the District of Nevada issued a decision declaring secs. 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) and (c) (1982), unconstitutional insofar as they provide for a conclusive presumption of abandonment of mining claims for a failure to provide timely annual filings with BLM. Locke v. United States, 573 F. Supp. 472 (D. Nev. 1983). The United States appealed that decision to the United States Supreme Court.

During the pendency of that case before the Supreme Court, the Board suspended consideration of mining claim recordation appeals. On Apr. 1, 1985, the Supreme Court issued its decision in United States v. Locke, 105 S. Ct. 1785 (1985), reversing the decision of the district court and upholding the constitutionality of the recordation provisions of FLPMA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:
Will A. Irwin
Administrative Judge

Franklin D. Arness
Administrative Judge

